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FUTURE OF UNITED STATES - PANAMIAN RELATIONS

BY

COLONEL JOSEPH L. GRAVES, JR.

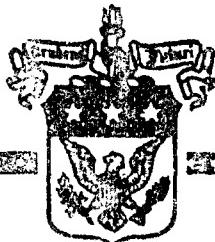
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FUTURE OF UNITED STATES - PANAMANIAN RELATIONS
AN INDIVIDUAL STUDY PROJECT

by

Colonel Joseph L. Graves, Jr., JA

Colonel Alden M. Cunningham
Project Advisor

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U.S. Army War College
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ABSTRACT

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FUTURE OF UNITED STATES - PANAMANIAN RELATIONS

CHAPTER I

INTRODUCTION

On December 20, 1989, the United States launched Operation "Just Cause" and sent its military forces into combat in Panama. The operation marked the tenth time in the 20th Century that the United States has used unilateral military force as an instrument of power. All of the interventions into another country, with the exception of Lebanon in 1958, involved neighboring countries in the Caribbean and Central America. The use of American troops in Panama represented a failure of United States diplomacy and climaxed years of steadily deteriorating relations between Presidents Reagan and Bush and General Manuel Noriega of Panama. Over the last couple of years, General Noriega had survived two coup attempts, a lost election, and harsh American imposed economic sanctions.

United States disenchantment with General Noriega became particularly public after Noriega was indicted in Florida on drug trafficking charges in February 1988. Shortly thereafter, in April 1988, economic sanctions were initiated in an effort to deprive the Noriega Government of income and force Noriega's departure from power. Although the economic sanctions did not topple Noriega from

his dictatorial position in Panama, they did produce devastating results. Prior to the sanctions, Panama had been a leading international finance center with over 120 banks holding an estimated \$40 billion in assets. The flight of capital out of Panama caused by the struggle to remove General Noriega from power reduced these assets to approximately \$8 billion. General Noriega's support in Panama eroded as well. In May of 1989, Noriega was compelled to annul presidential and legislative elections to prevent a landslide opposition victory. Relentless pressures from the United States and growing troubles in Panama finally cracked General Noriega's resiliency. On December 15 he had himself declared the "chief of government" and "maximum leader for national liberation" by his hand-picked National Assembly of Representatives, and he declared that Panama was in a "state of war" with the United States. When an unarmed United States Marine lieutenant was shot and killed by members of the Panamanian Defense Force (PDF) and another officer and his wife were physically abused and harassed by the PDF, President Bush decided to take military action. Addressing the American public on December 20, President Bush stated that he had ordered Operation "Just Cause" to protect the 35,000 Americans in Panama, to restore democracy in Panama, and to bring General Noriega to trial in the United States on the drug trafficking charges. The Administration also explained that the operation was premised on rights afforded the United

States under the terms of the Panama Canal Treaties of 1977. One can speculate that an unspoken impetus for Operation "Just Cause" may have been to reestablish U.S. credibility in Central America.

Operation "Just Cause" was not launched precipitously. For over two years the Reagan and Bush Administrations had attempted to encourage General Noriega's departure from power, without resorting to the use of United States military forces. The use of the armed forces of the United States was resorted to only after the other elements of power had failed and non-military options were overcome by events. There is evidence that there was considerable initial disagreement between the Department of State and the Department of Defense about the efficacy of using United States military power, and that, to the extent that such matters can be generalized, the Department of Defense for some time cautioned against the use of military power. President Bush's first chance to move directly against General Noriega had occurred on October 3, 1989 when dissident officers of the PDF attempted to overthrow the Panamanian strongman. However, although President Bush had made no secret of the fact that the United States encouraged a Panamanian coup to depose General Noriega, overt support for the attempted coup was virtually non-existent. The avalanche of criticism in the United States was immediate and severe. It did not matter that there were good reasons,

including a distrust of the coup leader, for not overtly participating in Panamanian affairs. Unmercifully, President Bush was described as weak, irresolute, and unwilling to match words with action. How much this criticism may have influenced the President's decision making process leading up to his approval of Operation "Just Cause" may never be known. While Vice President, Bush certainly had reacted angrily when a national news magazine's cover during the 1988 presidential campaign contained his picture juxtaposed with a question that implied that he might be a wimp. Certainly too, any charge that an Administration is weak or that America is a "paper tiger" arguably can influence foreign policy decisions. Detractors quickly suggested that Operation "Just Cause" was Bush's presidential rite of passage,² and not without some historical support. Each United States President since World War II has discovered that circumstances sometimes dictate the use of the military element of power. President Carter was the slowest to use it (the ill-fated attempt to rescue American hostages in Iran), and his failure to use it sooner is often cited as a key reason that he was not elected to a second term.

The history of the Reagan and Bush Administrations' slow disillusionment with General Noriega and the final removal of the latter from power will be the subject of many scholarly books. Likewise, historians and political

scientists will debate whether Operation "Just Cause" was necessitated by some threat General Noriega posed to U.S. strategic interests or by domestic political pressure. It is difficult to imagine why General Noriega would have been any more important than any earlier Central or South American dictator, except for the fact that the country he ruled was the home of "America's" Panama Canal. If United States - Panamanian relations are examined objectively in an historical context, it is certainly fair to say that the criticism heaped upon the Bush Administration for its failure to overtly support the attempted coup of October 1989 was not a result of any real concern about the lack of democratic rule in Panama. After all, Arnulfo Arias had been elected to Panama's presidency four times, and each time he was undemocratically removed. Also, a military dictatorship had come to power in Panama in 1968 and for twenty years thereafter the United States often had been "in tight" with Panama's dictators - first Omar Torrijos and then Manuel Noriega. The real issue was (or should have been), is, and likely will be the Panama Canal. So long as General Noriega enjoyed the support of the United States he hardly posed a threat to its vital interests. Conversely, so long as General Noriega remained in power after losing the support of the United States, Panama's instability adversely affected the security of the Panama Canal.

The United States efforts to oust General Noriega and

its publicized war against drug traffickers also provided an opportunity for some individuals in the United States Government to revisit a foreign policy decision that was not unanimously popular when it was made in 1977. There are still a number of Congressmen and a sizeable portion of the American public critical of the Panama Canal Treaties of 1977. Thus, the campaign against General Noriega kindled the flames of discontent over the treaties which, in 1976 and 1977, had precipitated America's most public and passionate foreign policy debate since that associated with United States participation in the League of Nations after World War I.

That many in the United States would find it difficult to give up the Panama Canal is hardly a surprise. The Reagan Administration was unsuccessful in obtaining a national consensus that support for the Contras in Nicaragua was a matter of urgent national security or that the Sandinista Government there posed a threat to America's vital interests. Can there be any doubt, however, that no Administration would find it difficult to convince the Congress, the media, and the American public that a communist threat in Panama would warrant immediate action by the United States? Consider the fact that, in 1989, twelve years after the signing of the treaties, Congress passed a resolution stating that it was the sense of Congress to delay implementation of the treaties. Consider the fact

that Senator Jesse Helms had suggested that implementation of the treaties be delayed two days for every day that General Noriega remained in power. Consider that there were even those who advocated, with little regard to international law or national honor, that the United States simply abrogate the treaties.

My purpose is to consider the future course of United States policy with respect to Panama. Because an appreciation of history is absolutely essential to chart a sound future course, this paper will first review United States-Panamanian relations up to the signing of the Panama Canal Treaties of 1977. Thereafter, the paper will address the 1977 treaties to determine whether there is any case for abrogating the treaties. The paper also will review United States - Panamanian challenges in the wake of Operation "Just Cause." Finally, the paper will offer conclusions with respect to what the United States policy should be towards Panama in the future.

ENDNOTES

1. G.A.O. Report, Central America - Impact of U.S. Assistance in the 1980's, GAO/NSIAD-89-170, p. 4.
2. R.W. Apple, "War: Bush's Presidential Rite of Passage," New York Times, December 21, 1989, p. A1.

CHAPTER II
HISTORY TO 1903

The economic ruin, the institutional instability, and the uncertain future of democracy in Panama raise concerns about the proper course of United States - Panamanian relations after Operation "Just Cause" and about the security and the operation of the Panama Canal after 1999. To understand these concerns one must appreciate the historical context of the Panama Canal Treaties of 1977, which obligate the United States to give control of the Canal to Panama by the year 2000.

The relationship between the United States and Panama is a long and unique one. Originally part of the Spanish colonial empire, hope of Panama autonomy was initially dashed when Spain attached it to the Viceroyalty of New Granada (Colombia). The United States, looking for a continental and commercial empire, earnestly became interested in the Isthmus of Panama during the first quarter of the 19th Century. Accordingly, when the President of New Granada offered contracts on a possible rail or ship crossing through the Isthmus, President Andrew Jackson, at the request of the Senate, sent an envoy to investigate the possibilities both in Panama and in Nicaragua.¹ Although nothing happened immediately, interest in a transcontinental route did not diminish. The Europeans were as interested

in a canal as were the Americans. The United States was particularly fearful that the British were becoming too entrenched in Central America and looked for a way to reach an accommodation with them. With a bit of sleight of hand, the United States suggested to Great Britain that several of the Central American countries had inquired about statehood. Britain, believing she was about to be left in the cold, immediately came to terms. The Clayton-Bulwer Treaty of 1850 provided that the two nations would cooperate in building any canal, and that neither would try to fortify or control it exclusively. When New York City financiers built a transcontinental railroad across the Isthmus between 1851 and 1855, however, no one could doubt that the United States was the dominant foreign power in the Colombian province.² Britain tacitly recognized the United States as the dominant power in 1901. With the costly Boer War soaking up money and the growing German navy posing a threat to the British Isles, British Ambassador Lord Pauncefote signed a treaty with Secretary of State John Hay basically giving the United States sole rights to pursue a canal across the continent.³ Meanwhile, nationalism flourished in Panama. With the success of the railroad, Panamanians wondered why the wealth generated should be shared with Colombia. The rise of nationalism also witnessed the beginning of anti-Yankee sentiment in Panama.

While the United States was successfully neutralizing

the British in 1850 and 1901, another challenge to United States supremacy appeared on the scene in 1878. In that year the builder of the Suez Canal, the frenchman Ferdinand de Lesseps began to dig a sea-level canal across Panama. The construction of a sea-leval canal proved impossible. That fact, and the deaths of over 20,000 to malaria and yellow fever, condemned de Lesseps' efforts and forced him to give up in 1889. The United States, however, was not discouraged. For the United States, a transcontinental canal was becoming a part of its manifest destiny. During the 1890's the first giant battleships of the modern American Navy were built. Military strategists of the day, including Alfred Thayer Mahan, urged that a canal was essential if naval vessels were to move quickly from one ocean to the other in order to protect both coasts and American markets worldwide.⁴ Mahan's words proved to be prophetic when the battleship Oregon spent 68 days sailing from the West Coast to Cuba via the tip of South America at the start of the Spanish-American War of 1898. A trip through an Isthmus canal would have taken about 22 days. That same year President McKinley stated that a canal was "demanded by the annexation of the Hawaiian Islands and the prospective expansion of our influence and commerce in the Pacific."⁵ At this time there was still some sentiment for building the canal through Nicaragua, the other suitable site. Private interests, however, pushed for the Panama option. Accordingly, in January 1903, the United States and

Colombia signed an agreement that gave the United States a 99 year lease on a six-mile-wide canal zone. The United States agreed to pay Colombia \$10 million plus an annual payment of \$250,000. The United States would also pay the New Panama Canal Company (owned by a group of frenchmen headed by Philippe Bunau-Varilla who had bought out de Lessep's company) \$40 million for its assets and concessionary rights. The United States Senate ratified the agreement, but the Colombian Senate rejected it on the grounds that Colombia should receive more money from the United States. Although upset by Bogota's failure to ratify, the United States quickly was presented with an alternative opportunity to control Panama and pursue its plans to construct a canal. Over the years, nationalism had continued to ferment in Panama. And this time, when the Panamanians again revolted against Colombian rule, they did it with American support. What happened over a period of days in November of 1903 has been the subject of debate among historians, political scientists, politicians and international lawyers ever since. For the purpose of this paper, however, it is sufficient to simply describe the terms of the agreement reached by Secretary of State Hay and the frenchman Philippe Bunau-Varilla. The Isthmian Canal Convention of 1903 gave the United States "all the rights, power, and authority within the Zone ... which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are

located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, and authority." Further, the Zone was widened to 10 miles and the grant to the United States was in perpetuity. In exchange Washington would pay Panama what it would have paid Colombia. The Panamanians protested the renunciation of sovereignty, of course. In truth, however, the Panamanians had little choice but to accept the arrangement. If they did not, the United States may simply have built the canal through Panama without paying them anything. Worse, the United States may have resurrected the route through Nicaragua. The pull-out of the United States, of course, would have permitted the Colombian army to march into Panama and put down the independence movement.

Within the terms of the Hay-Bunau Varilla Treaty of 1903 lay the seeds of strained United States - Panamanian relations. The terms were such that they precipitated the immediate and continuous Panamanian effort to achieve a different arrangement - an arrangement which finally came to fruition with the Panama Canal Treaties of 1977.

Should the United States be condemned for taking advantage of Colombia and Panama in 1903 and for "stealing" the canal? Or should the United States be praised for securing Panama's independence and for building a canal which has benefited the world? The implied extremes of

these two questions, gives a hint as to how disparate the answers might be, depending on the views held by the persons queried. The fact that these questions could have been asked in 1903 foretold what United States - Panamanian relations were to be like between 1903 and 1977. How one now answers these questions provides a starting point for the concomitant debate concerning whether the Panama Canal Treaties of 1977 were a give-away or a recognition of a changing world and of past injustices.

ENDNOTES

1. Walter LaFeber, The Panama Canal, the Crisis in Historical Perspective, pp. 9-10.
2. Ibid., p. 12.
3. Paul R. Ryan, The Panama Canal Controversy, p.9.
4. LaFeber, p.16. About this time "the U.S. national policy embraced four main tasks all of which the Navy was called upon to support. They were: (1) to acquire the Canal Zone and build a canal (upon this task the success of the other three depended in varying degree); (2) to support the Monroe Doctrine by maintaining stability and order whenever U.S. interests were threatened; (3) to help maintain the balance of power in Europe, where Britain and Germany were

beginning a spirited naval race; (4) to maintain the Open Door in China and protect American interest in the Far East." Ryan, p. 18.

5. LaFeber, p. 17 (Quoting from Charles S. Campbell, The Transformation of American Foreign Relations 1865-1900, p. 154).

CHAPTER III
HISTORY 1903-1977

The period between 1903 and 1977 witnessed a gradual but continual erosion of the United States' rights under the 1903 treaty. Premised on a somewhat lopsided arrangement, United States-Panamanian relations, perhaps predictably, were doomed to be tumultuous. Soon "it dawned on the Panamanians that the treaty of 1903 had, in fact, reduced their nation to something akin to a protectorate."¹ Anti-Americanism became part of the Panamanian psyche and frequently was demonstrated in violent outburst when opportunities were presented. In 1925, for example, sparked by a false report that the United States intended to expropriate additional lands, an angry Panamanian mob stoned a car in which General John J. Pershing was riding.² Influenced both by events and by a genuine desire to abandon "big stick" diplomacy, there were a number of efforts to improve United States-Panamanian relations between 1903 and 1977. As part of President Hoover's and then President Roosevelt's Good Neighbor Policy, relations did improve somewhat in the 1930's. The Hull-Alfaro Treaty of 1936 softened the terms of the 1903 treaty by granting fourteen concessions to the Panamanians, by increasing the annual annuity, and by cancelling the United States' guarantee of Panama's independence, thereby abrogating Panama's status as a protectorate. Later, a Treaty of Mutual Understanding and

Cooperation, signed in 1955, again raised the annuity payment and provided for an end to employment discrimination in the Canal Zone. Unfortunately, neither the 1936 nor the 1955 treaty mollified the Panamanians for long. The Suez crisis of 1956 precipitated another eight years of turmoil. Although the United States did not consider the status of the Panama Canal to be similar to that of the Suez Canal in any way, Egypt's nationalization of the Suez Canal and the United States support for Egypt vice Great Britain and France was cited by Panama as precedent for recognizing Panama's sovereignty over the Panama Canal. The position of the United States that the status of the two canals were dissimilar was legally defensible. Legal arguments, however, were becoming more and more meaningless. The colonial powers were giving ground to nationalism around the globe. In 1958 there were violent anti-American student riots in Panama. The issue - Panamanian desires to fly their flag in the Canal Zone. After more bloody riots in 1959, President Eisenhower made the decision to allow Panama to fly its flag in the Zone as visual evidence of its "titular sovereignty." President Eisenhower's decision, because it addressed sovereignty, the most contentious issue between the United States and Panama, marked the true "beginning of the end" for the 1903 treaty. Sovereignty and the flag soon became issues again. In 1963 President Kennedy directed that whenever the United States flag was flown the Panamanian flag would also be flown. The Canal

Zone governor decided that, rather than fly both flags, the American flag would not be flown at Balboa High School. In January 1964 American youths defied the governor and flew the flag at the high school. Two days later Panamanian youths arrived to hoist the Panamanian flag. Riots ensued and American troops were called out to quell the disturbances. In three days twenty Panamanians and four Americans died.

Although the road was to prove to be a tortuous one and a new treaty was to take nearly twenty years, after 1960 the United States seemed irreversibly committed to seeking a new arrangement with Panama. Shortly after the 1964 riots, President Johnson instructed the State Department to work on an arrangement whereby the United States would abandon complete control over the Canal Zone over a period of years. Beginning in 1965, the United States and Panama opened negotiations designed to produce a new treaty that would change the status of control over the canal. The challenges facing the negotiators at that time included: "how to provide for the proper defense of the waterway; how to maintain long-range United States strategic interests and simultaneously satisfy Panama's demand for complete sovereignty; and how to arrive at an equitable toll structure without abandoning America's original goal of a canal open to all ships at a low cost." 3 Two years of negotiations produced three draft treaties relating to (1)

more Panamanian control over the Canal, (2) joint defense of the Canal, and (3) a possible new, sea-level, canal. Opposition in the United States and in Panama, President Johnson's departure from office, and a military coup in Panama, however, brought all negotiations to a halt. Negotiations remained more or less stalled until 1973 when President Nixon appointed Ambassador Ellsworth Bunker as his Panama Canal negotiator and Henry Kissinger became Secretary of State.

In 1974 Kissinger and Panama's Foreign Minister, Juan Antonio Tack, signed the Eight-Point Pact describing pledges of what the nations would later agree to in a treaty. Basically the Pact provided that the 1903 treaty would be abrogated, that the United States would give up the exercise of sovereign rights in the Canal Zone, that the United States and Panama would share the operation and defense of the canal, and that the new treaty would end about the year 2000. 4 The strategy was that the best way to protect the interests of the United States was to coopt Panama, to assimilate its interests with those of the United States. In other words, the idea was to put Panama in a position where a neutralized and defendable canal, open to the ships of the world, was as advantageous to Panama as it was to the United States. 5

The Nixon Administration's preoccupation with the

Watergate scandal was to pre-empt its initiatives in United States - Panamanian relations and so the canal controversy continued to be debated in Panama and United States political circles throughout the early 1970's. In the United States the debate received national attention in the Republican primary campaigns of President Ford and Ronald Reagan. After beating President Ford in the general election, President Carter appointed Sol M. Linowitz as one of his Panama Canal negotiators. Linowitz had served as Ambassador to the Organization of American States from 1966 to 1969. He had also served as chairman of the Commission on United States-Latin American Relations, a nongovernment group which, in an earlier report, had affirmed the Kissinger-Tack Pact and had described the canal as an anachronism and as a vestige of "big stick" diplomacy.⁶ A month after taking office, President Carter sent his negotiators to Panama. The ensuing negotiations eventually resulted in the Panama Canal Treaties of 1977 signed by President Carter and Panama's General Omar Torrijos on September 7, 1977.

ENDNOTES

1. Paul R. Ryan, The Panama Canal Controversy, p. 23.
2. Jules Dubois, Danger Over Panama, pp. 187-88.
3. Ryan, pp. 2-3.

4. Ibid., pp. 96-97.

5. See, Robert G. Cox, "Choices for Partnership or Bloodshed in Panama, The Americas in a Changing World, pp. 132-55.

6. Cox, p. 31.

CHAPTER IV
PANAMA CANAL TREATIES OF 1977

The 1977 treaties are really two treaties. The first treaty, called the Panama Canal Treaty, supersedes all previous treaties concerning the Canal and describes how the Canal will be operated and defended until the year 2000. This treaty will terminate at noon, Panama time, December 31, 1999 at which time all American official presence will end and Panama will assume full sovereignty over the Panama Canal. The second treaty, called the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, declares that the Canal shall be permanently neutral, open to the vessels of all nations i.e. peace and war. The signing of the 1977 treaties, however, did not terminate the debate. 1

To understand why some Americans are so unhappy with the Panama Canal Treaties of 1977, the texts of the treaties must be examined in some depth. Many insist that the terms of the treaties amount to little more than a disguised give-a-way of American property to Panama. Others add that textual ambiguities, particularly those inherent in the reservations of both the United States and Panama, jeopardize the security, neutrality, and continued operation of the Canal. Finally, a few argue that the treaties of 1977 do not reflect a meeting of the minds of the

signatories and were not properly ratified by either the United States or Panama. 2

The principal Panama Canal Treaty consists of fourteen articles and an annex. The preamble reflects that the United States and Panama "[a]cting in the spirit of the Joint Declaration of April 3, 1964 ... and of the Joint Statement of Principles of February 7, 1974 ... and acknowledging the Republic of Panama's sovereignty over its territory, have decided to terminate the prior treaties pertaining to the Panama Canal and to conclude a new treaty" Article I abrogates all prior treaties and grants to the United States, for the duration of the treaty, "the rights necessary to regulate the transit of ships through the Panama Canal, and to manage, operate, maintain, improve, protect and defend the canal." Article II provides that the treaty will terminate on December 31, 1999. Article III describes Canal operations and management with Panama's responsibilities gradually increasing through the life of the treaty. Thereafter, Panama assumes full responsibility. Article IV addresses the protection and defense of the canal. It provides that the United States and Panama will act, in accordance with its constitutional processes, to meet the danger resulting from an armed attack or other actions which threaten the security of the Panama Canal or of ships transiting it. For the duration of the Panama Canal Treaty, Article IV gives the United States the primary responsibility to protect and defend the Canal.

The principal Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal consists of eight articles, an Annex A, and a protocol. In Article I Panama declares that the Canal shall be permanently neutral. In Article II, Panama explains that it declares the neutrality of the canal "in order that both in time of peace and war it shall remain secure and open to peaceful transit by the vessels of all nations ... so that there will be no discrimination against any nation ... and so that the canal ... shall not be the target of reprisals in any armed conflict between other nations of the world." Article IV provides that the United States and Panama agree to maintain the regime of neutrality established by the treaty. Article V provides that, after December 31, 1999, only Panama shall operate the Canal and maintain military forces, defense sites, and military installations within its national territory (although the treaty does not preclude the United States and Panama concluding separate agreements permitting United States presence after December 31, 1999). Article VI provides that the vessels of war and auxiliary vessels of the United States and Panama "will be entitled to transit the canal expeditiously." Article VII sets forth that the United States and Panama, through the Organization of American States, will invite all nations of the world to sign the protocol to the treaty and to thus ascribe to the Canal's permanent neutrality.

The terms of the principal treaties are further conditioned by reservations and understandings expressed by the United States Senate at the time of its advice and consent to ratification of the treaties and by understandings and declarations expressed by the Panamanian General Omar Torrijos. With respect to the Panama Canal Treaty, the United States Senate's reservations and understanding included the understanding that "nothing in paragraphs 3, 4, or 5 of Article IV of the Treaty may be construed to limit ... the provisions ... providing that each Party shall act, in accordance with its constitutional process, to meet danger threatening the security of the Panama Canal" With respect to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, the United States Senate's advice and consent was subject to several significant amendments, conditions, reservations, and understandings. These included an amendment to Article IV providing that the correct interpretation of the principle that the United States and Panama have the responsibility to assure that the Panama Canal will remain open and secure to the ships of all nations is that each of the two countries shall defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal. Further, Article VI is amended to explain that the provision pertaining to the expeditious transit of the vessels of war and auxiliary vessels of the

United States and Panama is to be interpreted to include, in emergencies, going to the head of the line of vessels transiting the Canal. The Senate also asserted that it was its understanding that the determination of need or emergency would be made by the nation operating the vessel. Additionally, as a condition to its advice and consent, the Senate provided that, if the Canal is closed, or its operations interfered with, the United States and Panama "shall each independently have the right to take such steps as each deems necessary ... including the use of military force in the Republic of Panama, to reopen the Canal or restore the operations of the Canal" The Senate added that it was its understanding that the agreement to maintain the regime of neutrality means that either the United States or Panama "may take unilateral action to defend the Panama Canal against any threat, as determined by the Party taking such actions." The amendments, conditions, reservations, and understanding expressed by the United States Senate were in the United States instruments accompanying the Panama Canal Treaty and the Treaty Concerning the Permanent Neutrality and Operation of the Canal and were accepted by General Omar Torrijos. The amendments, conditions, reservations and understanding, however, were not part of the treaties approved by Panamanians in their plebiscite of October 23, 1977.

The Panamanian instruments accompanying both the Panama

Canal Treaty and the Treaty Concerning the Permanent Neutrality and Operation of the Canal repeated the United States' amendments, conditions, reservations and understanding. The Panamanian instruments then added three additional paragraphs of understandings and declarations. The first paragraph asserts that Panama agreed to the exchange of the instruments of ratification on the understanding that there are positive rules of public international law contained in multilateral treaties to which Panama and the United States are parties and which both parties are bound to implement in good faith such as Article 1, paragraph 2, and Article 2, paragraph 4, of the Charter of the United Nations, and Article 18 and 20 of the Charter of the Organization of American States. The second paragraph provides that it is Panama's understanding that the actions which either Party may take to reopen the Canal or to restore its normal operation, if it should be interrupted or obstructed, "will be effected in a manner consistent with the principles of mutual respect and cooperation on which the new relationship established by the Treaty is based." In the third paragraph Panama "declares that its political independence, territorial integrity, and self-determination are guaranteed by the unshakeable will of the Panamanian people" and adds that Panama "will reject, in unity and with decisiveness and firmness, any attempt by any country to intervene in its internal or external affairs." Panama's three paragraphs of understandings and declarations

were not part of the Panama Canal Treaty or the Treaty Concerning the Permanent Neutrality and Operation of the Canal to which the United States Senate gave its advice and consent to on April 18, 1978 and March 16, 1978 respectively.

ENDNOTES

1. G. Russell Evans, The Panama Canal Treaties Swindles. See also, Wayne D. Bray, The Controversy Over a New Canal Treaty Between the United States and Panama.
2. Evans, pp. 4, 10, 25, 74.

CHAPTER V

SHOULD THE UNITED STATES ABROGATE THE TREATIES?

Notwithstanding the talk in some quarters that the United States should abrogate the Panama Canal Treaties of 1977, there is little merit to the suggestion. In fact, arguably even talk of abrogation does a disservice to U.S. interests in Central and South America.

Treaties may terminate or be terminated by a number of different methods. The most common methods that can occur in the normal course of events are: notice given pursuant to the terms of the treaty; fulfillment of the terms of the treaty; expiration of the period of time for which the treaty was concluded; extinguishment of one of the parties to a bilateral treaty or the subject matter of the treaty; agreement of the parties; implication, as for example the conclusion of a subsequent agreement covering the same subject matter or one wholly inconsistent with the earlier treaty; and, denunciation by one party and acquiescence by the other. 1 The Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal does not provide for giving notice of termination. The Panama Canal Treaty, by its terms, terminates on December 31, 1999 which, of course, is when the terms of the treaty will have been fulfilled and the period of time for which the treaty was concluded will have expired. The extinguishment of the

subject matter of both treaties, the Panama Canal, obviously is unlikely. Agreement of the parties to terminate either treaty is likewise unlikely. For any Panamanian Government an agreement to terminate the treaties in favor of any arrangement which would give the United States anything similar to what it had prior to 1977 certainly would be political suicide for that Panamanian Government and would undoubtedly precipitate anti-American sentiments in Panama. Finally, although the Treaty Concerning Permanent Neutrality and Operation of the Panama Canal provides that nothing in its terms precludes new agreements between the United States and Panama for basing rights beyond 1999, in the absence of a real threat, it is unlikely that a Panamanian Government would agree to a new base rights agreement for the same nationalistic reasons that it would not agree to any other new arrangement with the United States. The provisions in the treaties providing for the negotiation of new basing rights, however, could become an issue before 1999 under a scenario other than a threat to the Canal. In many ways Panama can be more accurately described as a "business" rather than as a nation. As so characterized, an unscrupulous Panamanian leadership may actually initiate discussions about basing rights in order to obtain additional and substantial monies from the United States. If this scenario was to materialize, the United States will have to consider whether continued presence in Panama is really in its best interests. Ironically, this may depend

not on concern about the defense of the Canal per se, but on concern about security of the entire southern flank.

The viability of treaties, of course, can be effected by war between the parties, violation of treaty terms by one of the parties, and change of circumstances. The perpetuation of treaties is the norm, however, and even the outbreak of war does not necessarily suspend or abrogate treaties,² although bilateral treaties, under international law as customarily applied, are generally suspended during periods of hostility.

Article 60 of the Vienna Convention on the Law of Treaties addresses those cases where one party of a bilateral treaty breaches the terms of the treaty. The Convention provides that a material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part. A material breach consists of a repudiation of the treaty or a violation of a provision essential to the accomplishment of the object or purpose of the treaty. The United States has consistently asserted that it has the right to terminate a treaty in the event of a breach by another party. Green Hackworth, then Legal Advisor to the State Department, and later a member of the International Court of Justice, wrote in 1935 that "the weight of opinion ... appears to incline

to the view that a state may ... terminate a treaty as between itself and a state which it regards as having violated such treaty." 3 The United States has seldom exercised the right to terminate a treaty based on breach of the treaty by another party. In this case, there is no evidence that Panama in any way has breached the provisions of the Panama Canal Treaties of 1977. In fact, it could be argued that, if either party has breached, the United States committed a breach when it launched Operation "Just Cause." In the United States' Instrument of Ratification and Reservations and Understandings to the Panama Canal Treaty the United States Senate's reservation provides that "any action by the U.S. ... shall be only for the purpose of assuring that the Canal shall remain open, neutral, secure, and accessible, and shall not have as its purpose or be interpreted as a right of intervention in the internal affairs of the Republic of Panama or interference with its political independence or sovereign integrity." And, in the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal a Senate amendment explains the correct interpretation of the right to defend the Canal. Specifically, the amendment states that this right "does not mean ... a right of intervention ... in the internal affairs of Panama ... it shall never be directed against the territorial integrity or independence of Panama." The Panamanian Instruments of Ratification With Understanding and Declaration for both treaties, as stated earlier,

recites that "[t]he Republic of Panama declares that its political independence, territorial integrity, and self-determination are guaranteed by the unshakeable will of the Panamanian people. Therefore, the Republic of Panama will reject, in unity and with decisiveness and firmness, any attempt by any country to intervene in its internal or external affairs." It can certainly be argued that Operation "Just Cause" was in violation of both U.S. and Panamanian reservations as expressed when the 1977 treaties were concluded. Panama, of course, is in no position to cry breach because of Operation "Just Cause," because to do so would be against its interests. Panama never repudiated the 1903 treaty and certainly will not repudiate the 1977 treaties.

The Vienna Convention on the Law of Treaties, in Article 62, addresses the effect of changes in circumstances. It provides that a fundamental change of circumstances may not be invoked as a grounds for terminating or withdrawing from a treaty unless (a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty, and (b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty. The Convention adds that a fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty, if the fundamental

change is a result of a breach of the treaty by the party invoking change of circumstances. It does not appear, therefore, that the United States has any case today for terminating or withdrawing from the Panama Canal Treaties of 1977 because of a change of circumstances. One can speculate how conditions existing in Panama on December 31, 1999 might present a change of circumstances justifying termination, withdrawal, or suspension of the Panama Canal Treaties of 1977. What should the United States do, for example, if Panama's government and other institutions are unstable on December 31, 1999? Such conditions would certainly indicate that a reappraisal of the treaties was in order. If such conditions existed, arguably the United States would be in a position to assert that its continued presence in Panama was essential to guarantee the continued availability of the Canal's use to all the world. Even under these circumstances, however, it is doubtful that abrogation of the treaties would be the proper course of action. Rather, it would appear better if the United States simply relied on the terms of the Treaty Concerning Permanent Neutrality and Operation of the Panama Canal and maintained its presence in Panama (hopefully with the blessings of the United Nations and the Organization of American States) until such time that all parties agreed that Panama was in a position to assume full sovereignty and responsibility for the Canal. In the alternative, if the political situation is such that unilateral action is not

feasible or advisable, the United States may be able to suggest and participate in an arrangement whereby the Panama Canal would be operated by some type of multi-national commission.

All discussion about terminating the Panama Canal Treaties of 1977 at this time should cease. Talk of abrogation implies that the United States is not reliable, that its word is not its bond, and that it has a callous disregard for international law. Further, any evidence that the foreign policy of the United States is inconsistent, fickle, tentative, or hostage to domestic issues, weakens the United States in its foreign relations in all areas around the globe. Termination of the treaties would not be in the best interests of either the United States or Panama. With the ratification of the Panama Canal Treaties of 1977 the United States and Panama terminated all previous treaties between them. There is no authority for the proposition that termination of a current treaty resurrects a prior one. Accordingly, if the United States was to abrogate the Panama Canal Treaties of 1977, it would have no legal basis to remain in Panama until December 31, 1999 and it would have no treaty conferred right to defend the Canal thereafter. After abrogation of the 1977 treaties, in the absence of a new treaty, United States troops remaining in Panama would be those of an occupying power.

A discussion of treaty abrogation would be incomplete without returning to a point briefly mentioned in the preceding section, that is, the argument that the Panama Canal Treaties are a nullity because they were not concluded in accordance with the laws of United States and Panama.⁴ The principal premise for the argument is that the United States Senate did not give its advice and consent to the Panamanian understanding and declaration (because they were added after the Senate voted on the texts of the treaties) and Panama did not conduct a plebiscite on the U.S. reservations and understandings (because they were added after the Panamanian plebiscite on the texts of the treaties). Therefore, the argument goes, because neither country followed its constitutional rules for concluding treaties, there was no "meeting of the minds" and, consequently, no treaties were concluded.⁵ American opponents of the treaties also allege that because Panama's Constitution authorizes only the President of Panama to conclude international treaties and because Demetrio B. Lakas was President, Omar Torrijos had no authority to conclude the 1977 treaties for Panama.⁶ Finally, extending the idea that under the 1903 treaties the Panama Canal and the Canal Zone were United States sovereign territories, opponents argue that the 1977 treaties could not be concluded without action by the House of Representatives because United States property was being given away.

The merits of these arguments need not be seriously debated today. The Department of State concluded at the time that the treaties were properly entered into by the United States and by Panama. Neither the United States Congress nor President Reagan (who had opposed the treaties in 1977) took any action between 1977 and 1989 to contest the validity of the treaties. No government in Panama took action to contest the treaties. Even if the negotiation, signing, advice and consent, or ratification of the treaties were tainted by irregularities, both the United States and Panama have long since acquiesced to their terms. Those who make these arguments about irregularities are grasping at straws. They were vehemently opposed to any new arrangement with Panama, regarded the 1977 treaties as a "give-a-way," and will never be convinced that a truly sovereign and independent Panama is in the best interests of the United States.

Those who argue that the treaties of 1977 are a nullity also believe that the treaties were a swindle perpetrated by the Carter Administration. They overlook the fact that the 1977 treaties had been worked towards by the Truman, Eisenhower, Kennedy, Johnson, and Nixon Administrations. They also overlook the fact that the 1977 treaties, which permit U.S. presence through 1999, which provide preferential treatment for U.S. vessels of war and auxiliary vessels, and which provide for unilateral U.S. action to

defend the neutrality of the Canal after the year 2000, are more advantageous to the United States than any treaty terms that could be negotiated today. The Panama Canal Treaties are an excellent example of an appropriate application of American power to achieve its national goals. The persuasion applied was not premised on punishment but on reward. In exchange for Panama's compliance, the United States rewarded Panama with both a positive benefit (the Panama Canal) and a willingness to forego a negative action (continued U.S. presence beyond 1999).⁷ Similar to what would happen if the North Atlantic Treaty Organization or its Status of Forces Agreement were renegotiated, a negotiation of a new treaty with Panama unlikely would result in anything as good as the current treaties.

One final point should be mentioned here. Presumably, only one portion of Panama's Instruments of Ratification With Understanding and Declaration would have given the Senate any cause for concern. After repeating and accepting all of the United States' reservations, amendments, and understandings, Panama's instruments recited, in part, that it agreed to the exchange of the instruments of ratification on the understanding that "there are positive rules of public international law contained in multilateral treaties to which both the Republic of Panama and the United States of America are Parties and which consequently both States are bound to implement in good faith, such as Article 1,

paragraph 2, and Article 2, paragraph 4, of the Charter of the United Nations, and Articles 18 and 20 of the Charter of the Organization of American States." Arguably, because the referenced Charters contemplate that States will not intervene in the affairs of another State without being asked by that State, Panama's Instruments contradict the terms of the treaties with respect to the unilateral right of the United States to take action to defend the Canal. A more logical interpretation of Panama's Understanding and Declaration, however, is that the language was chosen carefully by Torrijos to reinforce Panama's sovereignty and the sanctity of its internal affairs. In other words, the Understanding and Declaration were for the Panamanian public's benefit, and in no way impedes the United States with respect to its rights to act independently to keep the Canal open. It would seem, therefore, that the interests of the United States are adequately addressed. Panama did accept the United States' reservations, amendments, and understandings. Additionally, there is nothing in the Charters of either the United Nations nor the Organization of American States which precludes States from making arrangements beyond what is addressed in the two charters. This is exactly what the United States and Panama did. And, because of its right to defend the Canal, the United States was able to cite a threat to the integrity of the Panama Canal Treaties as one of its justifications for Operation "Just Cause."

ENDNOTES

1. William W. Bishop, Jr., International Law, Cases and Materials, p. 192.

2. Ibid. p. 194.

3. Green Hackworth, Digest of International Law, p. 346.

4. The most vehement account of why the Panama Canal Treaties should be considered a nullity can be found in G. Russell Evans, The Panama Canal Treaties Swindle, Consent to Disaster.

5. Ibid. p. 74.

6. Ibid. p. 25.

7. Amos A. Jordan and William J. Taylor, Jr., American National Security, p. 13.

CHAPTER VI

OPERATION "JUST CAUSE"

Operation "Just Cause," the largest American military operation since the Vietnam War, successfully removed General Noriega from power, neutralized Noriega's Panamanian Defense Force, and installed the more sympathetic government of Guillermo Endara. The military operation, however, may prove to be the easiest part of the United States' involvement in Panama over the next decade. What the United States now does will be critical. The United States must not permit itself or Panama to return to what their relations were prior to the 1977 treaties. If the right decisions are made, Operation "Just Cause" may one day be viewed as a testament to the wisdom with which the terms of the 1977 treaties were chosen, and as the catalyst for decades of harmonious relations between the United States and Panama. If the wrong decisions are made, the same military operation may be viewed as the inevitable culmination of pre-1977 thinking, as a failure to recognize that United States - Panamanian relationships changed forever in 1977, and as the beginning of a United States entanglement in Panama from which the United States cannot extract itself.

After the immediate concerns of civil peace and stability are addressed, the Panamanian government installed

by the United States will have to respond to extremely serious economic and political problems. Once one of Latin America's more economically stable nations, Panama is now in economic chaos - occasioned primarily by economic sanctions imposed by the United States over the last couple of years. By the middle of 1988 the United States had: suspended all economic and military assistance; taken action to cut off official loans from multilateral lending institutions; suspended Panama's sugar quota and trade preferences available under the Caribbean Basin Initiative and the Generalized System of Preferences; froze Panamanian assets in the United States; undertook to suspend all payments from the Panama Canal Commission and the trans-isthmus pipeline; and, undertook to suspend all direct and indirect payments by people and organizations in the United States and United States citizens and organizations in Panama. 1 Unemployment in Panama now runs in excess of 20 percent and Panama's financial industry is nearly in ruin as banking assets have plunged from nearly \$41 billion in 1987 to less than \$8 billion in 1989. It is obvious that the United States will be expected to put together a sizeable economic assistance package to put the Panamanian economy back on track. At the same time that steps are taken to save the economy, the new Panamanian Government must solve its political problems. The new government must quickly achieve legitimacy. To do this, President Endara must demonstrate that he genuinely represents the people and

interests of Panama and is not merely a caretaker for the United States. He must also strive to establish a truly civilian and democratic rule. This will require holding new elections early on and abiding by the results. The economic and political issues, however, as serious as they are, provide only a backdrop to the real issue in United States-Panamanian relations. It is the same issue which has been central since 1903 - sovereignty of the Panama Canal.

Operation "Just Cause" and the circumstances which precipitated it undoubtedly will reopen the debate over the Panama Canal Treaty and the Treaty Concerning the Permanent Neutrality and Operation of the Canal. The 1977 treaties will come under scrutiny both because the United States justified its action on rights given to it under the treaties and because a substantial number of Americans still believe that the 1977 treaties were a mistake. One news magazine poll conducted soon after Operation "Just Cause" found that 80 percent of those polled were of the opinion that the United States was justified in sending military forces to invade Panama and overthrow General Noriega; in the same poll, only 14 percent were of the opinion that the United States should go ahead with the process of turning over the Canal to Panama on schedule in 1999.² The results of the poll should not be surprising. It is self-evident that United States national interests in Panama inextricably are tied to the Panama Canal.

Four reasons were advanced for why the United States launched Operation "Just Cause." One reason suggested was that the action was necessary to restore democracy in Panama. Some will certainly ask, however, "who appointed America the world's political policeman?" 3 And, there has always been those who say "America has no responsibility toward democracy abroad beyond (in John Adams' words) wishing it well." 4 Certainly political scientists who count themselves among those belonging to the school of thought championed by Professor Seyom Brown and the like could hardly be expected to view Operation "Just Cause" as the United States' finest hour. A second reason suggested as justification for Operation "Just Cause" was to combat drug trafficking and to bring General Noriega before the criminal courts of the United States. No one can seriously believe, however, that bringing General Noriega to trial on drug charges warrants an invasion involving the largest military airlift since the Vietnam War and the biggest combat airborne drop since World War II. A third reason given was to protect the lives of American citizens in Panama. The right to protect a Nation's citizens (i.e., self-defense) is generally recognized in international law. There will be those, however, who will question whether a full-scale invasion was the best way to protect American nationals - particularly inasmuch as the invasion apparently precipitated the taking of hostages and the killing of several American civilians by forces loyal to

General Noriega. The fourth reason given for Operation "Just Cause," and the only other reason defensible under international law as recognized by most nations, was the United States' rights under the 1977 treaties to protect the Canal. Even here some will argue that there was little evidence that General Noriega seriously considered sabotage of the Canal. In fact, Administration officials acknowledged that there was little tangible proof that the security of the Canal was threatened. Arguably, it was the future of the Canal under the 1977 canal treaties, and not the immediate security of the Canal, that concerned the Bush Administration. Indeed, shortly after Operation "Just Cause" had begun, White House spokesman Marlin Fitzwater read a statement suggesting that the "integrity of the Panama Canal Treaties [was] at risk." Coincidentally, under the terms of the treaties, December 31, 1989 was to mark the date that the position of Canal Administrator passed to a Panamanian. There had been much consternation in the United States about confirming a Noriega appointee as the Canal Administrator to replace the American Administrator, Dennis P. McAuliffe. Operation "Just Cause" obviated this problem. On January 1, 1990 Fernando Manfredo, who had been the deputy administrator since 1979, became acting administrator of the Panama Canal. Although highly regarded by U.S. officials, there is some doubt that the Endara Government will nominate him to hold the post on a permanent basis, both because Manfredo had top posts under the regimes

of both Torrijos and Noriega and because the Endara Government will want to publically show some independence from Washington. Of the four reasons given for Operation "Just Cause," the reason associated with the security of the Canal and the integrity of the Panama Canal Treaties is the most convincing. This is so, I think, because it is the only one which recognizes the obvious - the special relationship between Panama and the United States, i.e., the Panama Canal.

Regardless of the legitimacy of the four reasons given for Operation "Just Cause," President Bush may have had little choice. When General Noriega's regime declared that a state of war existed with the United States, the United States either had to suffer the humiliation of withdrawing from Panama or had to take action to remove General Noriega from power. As mentioned previously, President Bush had received harsh criticism for not overtly aiding those Panamanians who had sought to overthrow General Noriega on October 3, 1989. Accordingly, like so many American Presidents before him, President Bush determined that it was necessary to demonstrate that the United States was not impotent to take action - particularly against a dictator who was a drug trafficker, who had made mockery of democracy, who had created an atmosphere that threatened American lives, who had totally frustrated all efforts short of military action to remove him from power, and who had arrogantly declared war on the United States.

In the United States, President Bush's decision was a very popular one. The national consensus was that the military intervention made sense. The use of military force to accomplish United States objectives in this instance appeared to meet most of the six criteria (as measured probably the only way they can be - retrospectively) for such use which former Secretary of Defense Caspar Weinberger had first enunciated at a speech before the National Press Club in 1984. The six criteria are: commit forces only if deemed vital to the national interests of the United States; commit forces only with the clear intent of winning; commit forces with clearly defined political and military objectives; commit forces only where the objectives and the forces are consonant in scale; commit forces only with reasonable assurance of Congressional and public support; and, commit forces only as a last resort. Even when the six criteria are met there is no guarantee that the use of armed force will enjoy unabated praise. Operation "Just Cause" is a good example of this phenomenon. Notwithstanding early unity, bipartisan support in Congress was fleeting. By February 1990, some senators and congressman were beginning to question the wisdom of using military force to oust General Noriega. Even a resolution to praise the troops who participated in Operation "Just Cause" had to be tabled when Republicans wanted the resolution to include praise for President Bush and the Democrats refused.

Although it was not without cost, 23 dead and 314 wounded U.S. servicemen alone, Operation "Just Cause" successfully accomplished its objectives including the removal of General Noriega. The success of this operation, however, in no way guarantees success for the United States in Panama. As mentioned previously, the very fact that the United States had to resort to using its military forces demonstrates that United States policy prior to December 20, 1989 failed. A new policy must now be formulated. Obviously, the United States cannot return to old policy. Success for the United States will only come when Panama is rebuilt (politically, economically, and morally), and when the issue of sovereignty, to include sovereignty of the Canal, is settled to the satisfaction of Panamanians.

ENDNOTES

1. G.A.O. Report, Review of Economic Sanctions Imposed Against Panama, p. 3.
2. "No Sympathy for the Devil," Newsweek, 1 January 1990, p. 22.
3. Editorial, New York Times, 21 December 1989, p. A30.
4. George F. Will, "Good Neighbor Policy," Washington Post, 21 December 1989, p. A29.

CHAPTER VII

THE CHALLENGES

The biggest challenges for the United States and for Panama lie in the future. The United States must determine what its interests are and how best to obtain and maintain them. The principal interest of the United States is, of course, a neutral Panama Canal open to the ships of all nations. Beyond this principal interest, the United States is best served if Panama enjoys internal security, democratic government, economic stability, and broad-based development.

The first order of business for President Bush is to make it unequivocally clear to the world, to the countries of Central and South America, to Panama, and to the American people and Congress that the United States has every intention of complying with the terms of the 1977 treaties. Each President since Harry Truman negotiated toward the 1977 treaties 1 and "[n]either Panamanians nor the world at large could tolerate ... treaty backsliding" 2 This point cannot be over emphasized. The primary confrontational issue between the United States and Panama has always been sovereignty of the Canal. Under the terms of the 1977 treaties, the Canal will be Panama's and Panama's alone after December 31, 1999. The world, the countries of Central and South America, and Panama have no

doubt about the rightness of this result. Unfortunately, some members of Congress and a portion of the American public must still be convinced. For this reason, one of the challenges for the Bush Administration is to "resell" the treaties to the United States public.

The Panama Canal Treaty and the Treaty Concerning the Permanent Neutrality and Operation of the Canal, like all treaties entered into by the United States, must be judged by one principal criterion: do they serve the best interests of the United States? The Carter Administration, and at least two-thirds of the United States Senate in 1978, thought that the treaties did serve the best interests of the United States. Neither the Carter Administration nor the United States Senate reached this conclusion haphazardly or recklessly. The treaties were publicly and heatedly debated in the media and in public forums around the country. Favorable action in the Senate came only after the Administration campaigned long and hard. The Senate voted on the treaties only after a full deliberative process. Once properly before the Senate, treaty consideration is governed by Senate Rule 30. In practice, however, the full procedures of Rule 30 are rarely followed. Instead, the Senate will normally proceed directly to consideration of a resolution of ratification. That the Senate chose to follow the lengthy and elaborate procedures of Rule 30 for the Panama Canal Treaties is an indication of the seriousness

with which the Senate approached the issue. The only other time this century that the Senate followed Rule 30 was when it considered the controversial Versailles Peace Treaty following World War I.

The considerations, premises, and realities with which the Carter Administration determined United States' interests in 1977 were not much different than those the Bush Administration has today. And, it is with those considerations, premises, and realities in mind that the worth of the Panama Canal Treaties must be judged.

In 1977 the proponents of the new treaties believed that the 1903 treaty they replaced was an anachorism. They pointed out that the 1903 treaty came into being under very unusual circumstances. Perhaps the treaty was out of date even in 1903, when colonialism was beginning to be challenged around the world. In any event, the proponents of the 1977 treaties thought that the 1903 treaty clearly was an unconscionable arrangement for the 21st Century and that it had become a source of problems for the United States. A Department of State publication, addressing the issue of why the 1977 treaties were negotiated, explained that "our best way of insuring permanent access to the canal is not our exclusive or perpetual control of its operation, but rather the active and harmonious support of the Panamanian population." 3

The opponents of the 1977 treaties did not view the 1903 treaty as either outmoded or inequitable. They believed that United States' interests were not well served under the terms of the 1977 treaties. They argued that there was no legal or moral principle which dictated that the United States should surrender sovereignty of the Canal, and that once the United States surrendered the Canal and the military bases in Panama there was no way of assuring a neutral and open Canal.

It cannot be denied that there are some risks attendant to giving Panama sovereignty over the Canal. It is also undeniable, however, that continued United States control of the Canal is unrealistic, if not practically impossible. Accordingly, political realities favored the proponents of the 1977 treaties in 1977 and today.

Although there was general agreement about the Canal's economic value to the United States, there was disagreement over the Canal's military value. The Joint Chiefs of Staff of the time did not oppose the 1977 treaties.⁴ In fact, the tempest over ratification became so heated that JCS endorsement may have been what eventually persuaded more than two-thirds of the Senate to give its advice and consent to the treaties.⁵ Four retired Chiefs of Naval Operations, however, wrote to President Carter urging that the "Panama Canal represents a vital portion of our U.S.

naval and maritime assets, all of which are absolutely essential for free world security." They accordingly urged that the United States retain full sovereign control over both the Panama Canal and the Canal Zone.⁶ Treaty opponents acknowledged that the super carriers and the super tankers could not transit the Canal. All other ships, however, could. Therefore, as long as the Canal was secure and open, the fleets in the Atlantic and Pacific could support each other by reinforcing each other through the Canal as the need arose. If the Canal was closed, so the argument went, the United States would be forced to construct, at great cost, two completely independently operating fleets. Accordingly, treaty opponents argued, the Canal was a vital security interest of the United States and, as such, should not be entrusted to Panama. Currently, approximately 100 U.S. military ships transit the Canal every year. During the Vietnam War the number of military ships using the Canal approached 1500.

There was no reason in 1977, nor is there any reason today, to question the wisdom, judgment, or integrity of the Joint Chiefs of Staff. Although it has been suggested that the Joint Chiefs were pressured into supporting President Carter, there is no evidence of it. During the deliberations in connection with the ratification of the treaties, the Joint Chiefs detailed their support of the treaties and their conclusion that the turnover of the Canal

did not endanger national security. The future, of course, is uncertain. The United States can never be absolutely certain that a Korean or Vietnam War, an oil embargo, or a threat to the Suez Canal might make the Panama Canal's operations critical. But, an open and neutral Canal cannot be guaranteed for long by an American presence in an unfriendly Panama; accordingly, the security and neutrality of the Canal is best protected by permitting a coopted and friendly Panama to assume sovereignty over it, as provided for in the 1977 treaties. The correctness of this conclusion is perhaps best evidenced by what did not occur in the twelve years since the ratification of the 1977 treaties. The Canal has remained open, except for the first day of Operation "Just Cause," despite horrendous United States relations with Panama, crippling economic sanctions, and criminal indictments against General Noriega. If General Noriega, who declared that a state of war existed between the United States and Panama, did not attempt to close the Canal, it is hard to believe that any Panamanian leader would risk the political suicide and destruction of the country that closure would bring. Panama needs the Canal for its very existence. The Bush Administration must resist any effort by Congress to abrogate the terms of the treaties. No civilian, democratic Panamanian government could stay in power, if it acceded to any United States suggestion that the 1977 treaties be revisited and renegotiated. Because "restoring democracy" was one of the

stated objective of Operation "Just Cause," the United States cannot jeopardize the installed government by tampering with the orderly transfer of the Canal to Panama as provided for in the 1977 treaties.

After making it unequivocally clear that the United States has every intention of complying with the terms of the Panama Canal Treaties of 1977, the United States must embark upon the process and challenges of "nation building" in Panama.

With its dollar-based economy and its Canal, it will be easier to rebuild Panama's economy than any other Latin American country under similar circumstances. Massive American assistance, however, will be necessary. On January 25, 1990 President Bush announced a one billion dollar package of grants, loans, and other types of assistance to rebuild Panama's economy. Despite the large Federal budget deficit and competing demands from traditional allies and the emerging democracies of Eastern Europe, Congress immediately approved \$42 million dollars in emergency humanitarian aid and waived sanctions in order to release another \$500 million dollars on February 7, 1990. Congress likely will approve the rest of the package. The entire package includes: grants and loans to promote economic development; new incentives for American investment; an emergency public works program; and, funds to build housing

and repair businesses damaged or destroyed during Operation "Just Cause." There also are funds to help Panama reduce its foreign debt, and a decree restoring the quota for American imports of Panamanian sugar. President Bush's one billion dollar proposal is only about one half of what the Endara Government requested. Testifying before the Senate Foreign Relations Committee on January 25, 1990 Assistant Secretary of State for Inter-American Affairs, Mr. Bernard W. Aronson, described Panama's poor economic situation. He stated that Panama's unemployment increased by 15 percent or more and that its gross domestic product (output of goods and services) decreased by 15 percent or more during the last two years. Additionally, for the last two years, the Noriega regime made no debt service payments to either the International Monetary Fund or the World Bank. The Endara Government has inherited arrearages of \$940 million dollars to various financial institutions. Accordingly, the United States' final bill undoubtedly will be considerably well over the one billion dollars proposed by President Bush. Regardless of the amount of the final aid package, to the extent possible that aid should be given without strings attached. As one Panamanian economist has stated, while the United States has a right to oversee distribution of its aid, it should not dictate the details of Panama's economic restructuring. If left alone, Panama has the potential of becoming this hemisphere's Hong Kong. 7

Repairing the shattered economy will not be enough to make Panama a thriving, viable nation. Panama's political institutions are equally bankrupt. Since Omar Torrijos' military coup in 1968, Panamanian military commanders have completely dominated token civilian leaders. In devising its strategy for Panama, the United States must not make the short-term mistake of looking at Panama's problems one at a time - attempting to solve each in turn and then moving on with no thought to the ultimate outcome. The United States must pursue a policy which is consistent and which foresees the future goal desired. As Panamanian Archbishop Marcos McGrath said in a television interview on January 4, 1990, "[the United States needs] a sustained political policy for Latin America and for each country, not a spot solution for every problem as it occurs."

Above all the United States must be consistent. Presumably because of fears of jeopardizing its military bases in the country and because of concerns about the Canal, the United States has only selectively and sporadically complained about the lack of democratic traditions in Panama. A former member of the Carter Administration accurately reminded Americans that [General Noriega] was once a treasured asset of the CIA, trusted associate of the American military, and partner of American presidents." 8 He added that the "Panamanian Defense Forces (PDF) that Noriega ran is our creation too." 9 The

United States cannot make similar mistakes as it seeks to bolster the government of President Endara and oversees the creation of a new National Guard, Panamanian Defense Force, or Panamanian Public Force. The United States must appreciate the political reality that President Endara's government, to Panamanians and to the rest of Latin America, "appears more legal fiction than political fact. Its mandate ... needs early reaffirmation at the polls." 10 Although Endara apparently was the winner of the May 1989 election, it is difficult to say whether he was so overwhelmingly popular or Noriega so overwhelmingly unpopular. Regardless of what the circumstances were in May 1989, Endara's strength certainly is not as great having been put in power by the United States as it would have been had he peacefully and orderly ascended to power immediately after the election. General Noriega's mafian-like government, with its involvement in drug trafficking, arms smuggling, and other lawless acts, posed some threat to United States interests, but not the only threat. General Noriega's ouster, therefore, is only the beginning. Many undoubtedly would agree that "[o]nly the clear recovery of full Panamanian sovereignty ... can secure an enduring triumph." 11 In this connection, one of the first steps which the Endara Government should take is to quickly reestablish "membership" with the Group of Eight among Latin American nations and to aggressively seek the assistance of the Organization of American States. The Endara Government

can ill-afford to appear a puppet of the United States nor can Panama appear to be "alone" among its neighbors. Just as the Bush Administration surely would have preferred that some type of multilateral action by the Group of Eight or by the OAS would have toppled General Noriega from power, so too the Endara Government must realize that regional sympathies will bolster the chances of its survival. The Endara Government is walking a tightrope. It wants to be recognized and respected in Central and South America. It also wants (at least presently) United States forces to remain in Panama to insure security. These two goals are somewhat contradictory, because it cannot achieve the first unless it can demonstrate that its "legitimacy" is not based on the presence of United States troops. On January 31, 1990 President Bush committed the United States to reducing the number of troops in Panama to 13,600 by the end of February. There were only about 13,600 in Panama prior to Operation "Just Cause." President Bush's announcement, however, did not obviate the Endara Government's predicament because the mission of the troops remaining in Panama is not the same as it was prior to Operation "Just Cause." American troops are providing security; American advisors are into the business of nation building; and, the Commanding General of Southern Command and the American Ambassador are the key individuals in the country. In short, the American presence in Panama is more akin to what it was pre-1977 than what it was pre-Operation "Just Cause."

Accordingly, some form of election or referendum will be necessary to solidify the Endara Government's legitimacy.

United States policy makers have realized for some time that changes in policy were necessary if the United States was to successfully address the challenges in Panama. Studies and workshops have considered the challenges and made recommendations. On February 3, 1989 the General Accounting Office held such a workshop. Six experts on Panama were invited to review events in Panama and to explore possible United States options. The experts included representatives of the business and academic communities as well as representatives from the State Department, the National Defense University, and the Agency for International Development. A portion of the Workshop's report 12 became "dated" following Operation "Just Cause." Nevertheless, the experts' opinions are valid and very much worthy of consideration.

The first point made by the panelists was that attempts by the United States to simultaneously strengthen democracy and the Panamanian Defense Forces had been a failure. The Panamanian officers had not withdrawn from politics and had not changed the structure of the PDF by developing police functions into a separate entity. As one commentator observed, "[o]ver the years, the PDF became its own law. accustomed to nearly complete autonomy." 13 The GAO

Workshop panelists agreed that the lack of a Panamanian military academy to train PDF officers was a failure of United States strategy, because officers trained individually in the United States had not set an example for the rest of the members of the PDF and had not made the institutional changes needed to professionalize the PDF.

14 Now Panama is creating a new defense force. The type of force it chooses to create is critical. Certainly, Panama does not want to reestablish something similar to the PDF which General Noriega commanded. Perhaps, as some Panamanians have suggested, a national police force like that in Costa Rica should be developed. If Panama chooses to have only a police force and no real Army, however, it may find itself compelled to turn to the United States for help in the event that its sovereignty was challenged. Would such an arrangement really be in the best interests of either Panama or the United States? This is a question which both the United States and Panama must carefully consider before either country commits itself to something it will not want to abide by later. The panelists also believed that an appreciation of the history and unique structure of Panama's port economy was necessary to understand why changes in the PDF's structure were not made. Graft and corruption had always been tolerated to some extent by the business community. Drug trafficking and other criminal practices corrupted the PDF further. The lesson for the United States is this: if the PDF had not

been involved in police functions and in politics, and had been instead only a professional defense force, there would have been less corruption. Just as it was partially responsible for General Norieg and the PDF, the United States must share part of the blame for the military's ascendancy over civilian governments in Panama. The United States, for example, did not take any action in 1985 when President Nicolas Ardito Barletta was forced to resign. The lesson to be learned here perhaps is that, having accepted Barletta's election in 1984 despite his weak power base anywhere but within the PDF (and despite the fact that the winner of the 1984 election may well have been the leftist-populist former president of Panama, Arnulfo Arias Madrid), the United States should have supported him in 1985 and thereby fortified the democratic process (however flawed).

The second point made by the panelists concerned the United States apparent inability to prioritize U.S. interests. 15 Defense of the Canal and a fully democratic Panama are primary United States long-term interests. The panelists believed that the interposition of short-term, highly visible, and unstable objectives, such as the interdiction of drugs, support for U.S. security objectives in the rest of Central America, intelligence gathering, economic sanctions, and the criminal indictments against General Noriega, were sometimes contradictory to each other

and to the long-term objectives.¹⁶ This observation, and the panelists' concern that the indictments against Noriega were unenforceable, has been mooted somewhat by Operation "Just Cause." Nevertheless, the lesson for the United States is that it should not be short-sighted (a charge frequently made) and should keep its foreign policy in tune with its long-term interests. Domestic politics and the Congressional pressure associated with domestic issues must not be able to be the controlling factor in foreign policy.

The third point made by the panelists was that the United States' economic sanctions against Panama were an example of how complex and contradictory the decision-making process with regards to Panama has been.¹⁷ The sanctions did not accomplish what they were designed to do - remove General Noriega from power - and may have actually hurt U.S. business interests and the Panamanians opposed to Noriega. The lesson here should be that the effects of economic sanctions can seldom be confined to narrow targets (like General Noriega and the PDF). In this case, the sanctions hurt the Panamanian people and all but destroyed the Panamanian economy. Now the United States will have to expend considerable monies to rebuild an economy it tore down.

The panel's recommendations have been overcome by events. It is interesting to note, however, that the

panelists recognized in February 1989 the two key events for the United States with respect to Panama in the coming year: the May 1989 elections; and, the January 1990 submission to the U.S. Senate of a Panamanian for confirmation as Administrator of the Panama Canal Commission. They correctly guessed that the nomination of a Noriega crony for the post of Canal Administrator and the legitimacy of the elections would be the principal issues for the United States. Supposing that the election would be dishonest, the panelists saw that the United States would be faced with a dilemma: nonrecognition would complicate continued implementation of the Panama Canal Treaties; recognition would leave General Noriega in power. Despite the expected no-win scenario, not surprisingly the panelists did not view military action as a viable option in February 1989, because it would, inter alia, negatively affect U.S. relations with the rest of Latin America. 18

ENDNOTES

1. William J. Jordan, Panama Odyssey, p. 343.
2. David Norman Miller, "Panama and U.S. Policy," Global Affairs, Summer 1989, p. 145.
3. Department of State Publication 8924.
Inter-American Series 114, November 1977.

4. "The Military Values of the Panama Canal,"
Commanders Digest, 25 March 1976.

5. Amos A. Jordan and William J. Taylor, Jr. American National Security, p. 100.

6. The letter, signed by Admirals Robert B. Carney, George Anderson, Arleigh A. Burke, and Thomas H. Moorer, was published in the Congressional Record, 30 June 1977, p. S11345.

7. Wall Street Journal, 15 February 1990, p. A14, quoting Panamanian economist Guillermo Chapman.

8. Hodding Cotter III, "Viewpoint," Wall Street Journal, 4 January 1990, p. A13.

9. Ibid.

10. "Operation Just Begun," New York Times, 5 January 1990, P. A30.

11. Ibid.

12. G.A.O. Report, U.S. Assistance in Central America, Appendix III, GAO Workshop on Panama, GAO/NSIAD-89-170, pp. 77-82.

13. Lee Hockstader, The Washington Post, 10 January
1990, p. A12.

14. G.A.O. Report, p. 78.

15. Ibid., p. 79.

16. Ibid.

17. Ibid.

18. Ibid., p. 80-81.

CHAPTER VIII

CONCLUSIONS

1. The United States, a free society blessed with a strong two-party system and the First Amendment, encourages open debate. These very commendable features also can occasion, however, "Monday morning quarterbacking" and irresponsibility. With respect to Panama, the United States must keep to the high moral ground. The United States must reaffirm its commitment to the terms of the Panama Canal Treaties of 1977 and to the rules of international law. Talk of renegotiating or abrogating the Panama Canal Treaties will only exacerbate an already dangerous situation. Such talk will change what had been a Noriega-United States confrontation into a Panamanian-United States confrontation. It will fuel anti-American sentiment not only among Panamanians but among all Central and South Americans as well.
2. Operation "Just Cause" may have been privately welcomed by some in Central and South America who realize that both the Organization of American States and initiatives by the Central American countries failed to reform or to topple the Noriega Government. The military action also may have politically restored United States credibility in the region. Panamanians overwhelmingly (92 percent of them) approved the American action. Nevertheless, it is

dangerous practice when one country invades another. Interference in the internal affairs of a sovereign nation is contrary to the charters of the United Nations and the Organization of American States. The votes in the United Nations and the Organization of American States expressing disapproval of the action taken by the United States cannot be lightly dismissed as customary Third World anti-Americanism. Time will tell whether the United States erred in including the restoration of democracy and the capture of General Noriega among its justifications for Operation "Just Cause." Certainly, Central and South American enthusiasm for the United States' anti-drug efforts may suffer a temporary setback. Mexico, Columbia, and Peru all evidenced some reluctance to publically commit to joint efforts following Operation "Just Cause." It may be that the Bush Administration would have been wiser to justify its actions only on its right to protect American persons and property (self-defense) and on its rights under the terms of the Panama Canal Treaties, both of which are much more defensible under international law. The United States can best achieve its interests in Latin America with the cooperation of the countries of the region. Major United States interests include: a peaceful, secure southern flank; continued operation of the Panama Canal; access to oil, raw materials, markets, and investments; lessening of the asymmetrical power and disparate socioeconomic circumstances of the United States and its

southern neighbors in the American hemispheres; cooperation on transnational problems like narcotic trafficking and the environment; and, securing the support of the entire region for United States foreign and security policies.

3. Although the Panama Canal remains an interest of the United States, it is arguably more of an interest to Japan, Korea, and the countries of Central and South America. It is in the interests of all nations that the Panama Canal remains neutral and operational. For example, the Canal is critical to the economies of Ecuador, Chile, and Peru, which count on it for more than 40 percent of their trade. By signing the Protocol to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, all nations can share in assuring the neutrality and security of the Canal.

4. The most likely risk to Canal operations is sabotage along its 50 miles of waterway and at its three locks by disenfranchised Panamanians. General George Brown, former Chairman of the Joint Chiefs of Staff, once remarked that it would take 100,000 troops to insure the security of the Canal against an enemy intent on closing it. He added that the Canal "is more efficiently and effectively defended in partnership with Panama." The bigger Panama's share of the Panama Canal's proceeds the more Panama will regard the Panama Canal as its national treasure. So long as Panama's

economic survival depends on the Canal, Panama likely will act in such a way to guarantee that the Canal remains operational.

5. The Panama Canal Treaties of 1977 serve the best interests of the United States. America's military and economic interests in the Canal are in its use, not its ownership. The terms of the 1977 treaties are consistent with the democratic principles of the United States, adequately provide for defense of the Canal, and silence those who would describe previous United States-Panamanian relations as those between a colonial power and its colony.

6. The Panama Canal Treaties of 1977 enhance the image of the United States with all Central and South American countries and continued implementation of the treaties gives some legitimacy to Operation "Just Cause." The risks associated with the treaties, including giving up sovereignty over the Canal, are acceptable. The terms of the treaties provide as realistically as possible for the Canal to remain neutral and open to the shipping of all nations, at a reasonable price.

7. The United States must appreciate that the removal of General Noriega guarantees the establishment of neither a true democracy nor an apolitical PDF. The political and corrupt PDF was more the center of gravity than was General

Noriega. Accordingly, it will be necessary (and a challenge) to restructure the PDF. It must not be responsible for police functions, it must be nonpolitical, and it must be accountable to a democratically elected civilian government. As stated earlier, a case can be made for not creating a defense force at all. Perhaps Panama and the United States would be better off, if Panama had only a police force. Panama would be well rid of the type of security force so often in Central and South America the vehicle by which dictators obtain and maintain power. The lack of a defense force might also benefit the United States. Without a defense force, Panama would be more likely to request U.S. assistance in the event of an actual threat to the security of the Canal. Although the United States has a right to take independent and unilateral action to defend the Canal, action taken pursuant to a request from Panama obviously would be preferable to the United States and to Panama and more acceptable to the rest of Central and South America.

8. The economic sanctions imposed by the United States had little effect on their intended targets (General Noriega and the PDF) and indiscriminately wrecked Panama's economy. Accordingly, the United States, particularly following Operation "Just Cause," bears a responsibility to provide the aid required to rebuild Panama's economy. The United States must not delay its economic assistance.

Embarrassingly for the United States, on March 1, 1990 Panama's President Endara began living and working out of Panama City's Metropolitan Cathedral. President Endara began a fast "in sympathy with Panama's poor" and stated that delays in the delivery of promised U.S. aid was "undermining Panama's experiment with democracy." President Bush's one billion dollar package may only be a first installment. This aid, and whatever comes after it, however, cannot be in the form of a handout. The United States cannot permit itself to get into a position of simply subsidizing Panama in perpetuity. Nor should Panama put all of its planning into its banking and Canal operations. Broader economic infrastructure must be sought. Accordingly, other revenue producing initiatives, for example tourism, should be pursued. Additionally, similar to the Marshall Plan for post-World War II Europe, the United States must insure that the Panamanian Government agrees to a cooperative plan. Only in this way can the productive resources of Panama, supported by its private sector and by American assistance, be brought to bear to make the plan successful. To paraphrase President Harry Truman, United States foreign policy must be viewed as being buttressed by indivisible political and economical underpinnings.

9. The United States cannot afford to look at Panama in a vacuum. The rise of insurgencies throughout Central America

and unfriendly governments in Cuba and Nicaragua present serious challenges to U.S. and to Central American security in the 1990's. As a potential platform for subversion into Mexico or Venezuela, Central America is strategically vital to the United States. Accordingly, the United States strategy should address all of Central America and be designed to facilitate security, democracy, economic stability, and equitable broad-based development in the entire region.

10. Finally, the United States should consider whether it is playing too visible a role in promoting democracy in Panama (as well as elsewhere in Central America). Too much visibility puts United States prestige too much on the line, risks criticism that the United States is playing "Big Brother," and invites cries of "Yanqui go home."

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